

REMARKS

During a prior telephone interview with Examiner Reginald Alexander on 13 December 2006, the Examiner indicated that Steiner et al. (U.S. Patent No. 3,345,934) discloses preheating of the reservoir. The Examiner maintained this position in the present Office Action.

Undersigned attorney for applicants disagree for the reasons explained below.

Claims 1-20 stand rejected as anticipated by Steiner et al. The Office Action at page 2 the Examiner tries to read into Steiner et al. all of the limitations of the claims. Steiner et al., in fact does not have each and every element of the claims and therefore does not anticipate the claims.

In the Office Action, the Examiner interprets the language at column 2, lines 65-70 of Steiner et al.:

“The electric resistance heater and the thermostatic control element 43 cooperate to maintain the envelope 40 of heated air in the chamber 28 at a temperature less than the temperature of the coffee entering the container 21....”;

to mean that Steiner et al.’s liner 22 is preheated. However, Steiner et al. completely fails to mention nor teach heating the container before dispensing coffee into it.

Rather, the full passage (provided below), provides a different meaning when read in its entirety:

“The electric resistance heater and the thermostatic control element 43 cooperate to maintain the envelope 40 of heated air in the chamber 28 at a temperature less than the temperature of the coffee entering the container 21 at pipe 18, that is, less than the boiling temperature for water, but at a temperature well in excess of the minimum temperature at which brewed coffee may be served, and the temperature of the envelope 40 of air with in the chamber 28 is maintained at approximately 160 °F. This temperature is in excess of the temperature at which most people can drink brewed coffee and therefore it is in excess of the minimum temperature at which coffee can be served at the pouring spout 27 of the container.” (col. 2 ln. 65 - col. 3 ln. 6)

By reading the entire passage it is clear that Steiner et al. does not pre-heat. Rather, to the contrary, this passage of Steiner et al., when taken in context, merely provides information to define the range of practical temperatures at which coffee can be maintained. This practical

range also helps define the type of heater (electrical resistance) which could be used in the server.

The temperature range is defined as being bounded by
a maximum temperature “the temperature of coffee entering the container” (i.e. theoretically the hottest the coffee will be, immediately after brewing) and
a minimum temperature 160⁰F, which is a temperature that is “in excess of the temperature at which most people can drink brewed coffee and therefore it is in excess of the minimum temperature at which coffee can be served at the pouring spout 27 of the container”. However, “the temperature of the envelope 40 of air within the chamber 28 is maintained at approximately 160⁰F” as a preferred temperature target for the reasons defined in the passage.

Nowhere does Steiner et al. mention preheating or any control or operation related to preheating. Arguably, Steiner et al. is precluded from providing preheating because the “simple electrical circuit” (col. 3-lin. 33) is not configured for pre-heating. While a thermostat and heating element are provided they merely maintain a desired temperature. There is no teaching or indication of a device to initiate “preheating”. The simple power terminals 45 and 46 are shown but how the heater is activated is not mentioned. Since it is a simple circuit, it could be argued that there is merely an on/off switch, but nothing to initiate preheating.

In contrast, the present application is configured to control the heater on to pre-heat. The control of the heater to preheat is controlled by the controller which operates in response to the initiation of a brew cycle.

Steiner et al. is devoid of any disclosure or discussion as to how the process is started. To assume that Steiner et al. teaches pre-heating is pure speculation. That is, at the beginning of the day when one first starts up the coffee server and brews coffee, is the chamber 28 heated before or after introduction of the coffee into the interior stainless steel liner 22? Even assuming (and such is not conceded) that heating of the chamber 28 begins prior to introduction of coffee into inner liner 22, it is not evident that preheating of the inner liner would or could occur. Can the heating of the chamber penetrate the exterior liner 23 and insulation 24 and cause preheating of the inner liner 22? How long would it take for the heating to have any effect on the liner, especially since it is completely protected by insulation 24 sandwiched between an inner 22 and outer 23 wall?

The burden is on the examiner to show that such is the case¹ and such has not been shown.

Applicants assert there is no disclosure in Steiner et al. of preheating the reservoir 22 before dispensing beverage to the reservoir 22 as recited in applicants' claims. Moreover, there is no disclosure in Steiner et al. of the heater operatively coupled to the reservoir. Applicants' independent claims are directed to a server including a heater operatively coupled to the reservoir for transferring energy from the heater to the reservoir and means for preheating the reservoir before depositing beverage into the reservoir. Steiner et al. teaches away from the heater operatively coupled to the reservoir. Steiner et al. shows a heater isolated from the reservoir, positioned in a corner of the server, uncoupled from the reservoir. For the reasons noted above Steiner et al. does not disclose the heater operatively coupled to the reservoir nor such means for preheating the reservoir.

The dependent claims of the present application recite additional limitations not disclosed by Steiner et al.

In view of the above, it is submitted that all of the claims 1-20 are in condition for allowance and such action is, respectfully, requested.

If there is any issue remaining to be resolved, the examiner is invited to telephone the undersigned so that resolution can be promptly effected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg LLP, Deposit Account No. 12-0913 (27726-93386).

Respectfully submitted,

BARNES & THORNBURG LLP



Grant H. Peters

Reg. No. 35,977

Tel. No. (312) 214-8332

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¹ See *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) and *In re Oelrich*, 666 F.2d 578, 581-582, 212 USPQ 323, 326 (CCPA 1981).